Form 16D can be used for any charge, whereas Form 16E is to be used specially where the principal sum is payable on demand. So that even where the principal sum is payable on demand Form 16D can still be used. And I quote relevant passages from the Federal Court in *Mary Michael's* case.

Per Azmi L.P. at page 172:

"It is to be observed that a notice in Form 16D applies to any charge so that it can validly be used even in the case of a charge where the principal sum is payable on demand, even though Form 16E is specially designed for this purpose. This would be particularly true of a charge where the principal sum bears interest and the chargor is in default of payment of interest as stipulated in the charge... whereas Form 16D can be used whether or not the principal sum is payable on demand, Form 16E can be used only if the principal sum is payable on demand."

Per Ali F.J. at page 174:

"When a chargee issues a notice in Form 16D I do not think it can possibly be objected to as was done in this case. A chargee entitled to ask for an order for sale under section 255 of the National Land Code to which Form 16E is applicable is not, I believe, precluded from proceeding under section 254 of the Code if he so chooses."

These passages are self-explanatory and I need elaborate no further. The consequence of this case would be that to be on the safe side Form 16D should always be used.

For the sake of completeness I would like to consider whether this could have been properly a case under Form 16E though even if it is, a notice under Form 16D is not fatal to the case. For this purpose both the memoranda must be examined. Clause 1 of the annexure to the memorandum of charge reads in part:

"... the repayment on demand of the sum of $15,000 (Dollars Fifteen Thousand only) ... referred to as 'the principal sum') together with interest thereon as the rate of twelve *per centum* (12%) per annum ... but ... until such demand is made ... the chargor shall pay the principal sum with interest thereon ... by monthly instalments of dollars three hundred and forty-six and cents fifty only ($346.50)...."

Clause 4 of the memorandum of agreement reads in part:

"... and will agree to pay the said principal sum and the interest ... by monthly instalments of $346.50 (dollars three hundred and forty-six and cents fifty only)....".

It is clear from these two clauses that the repayment on demand is not only of the principal sum but of the interest as well. When the charges demanded payment of $1,386 it was for the principal sum plus interest for four monthly instalments. It is thus proper to use Form 16D.

I therefore order the following: —

(1) That the application for order for sale be dismissed with costs. (2) That the applicant/chargee deliver up the note or memorandum to the respondent/chargor for cancellation. (3) That within 14 days from today *i.e.*, the date of the order the applicant/chargee deliver to the respondent/chargor's solicitors the duplicate copy of the memorandum of the charge and all documents of title to the land. (4) That within 14 days from today the applicant/chargee must execute a registrable memorandum of discharge, thereby discharging the Charge Presentation No. 574 Vol. CXCVI Folio 142 against the whole of the land held under certificate of title No. 25701 for Lot No. 286 in the Town of Kuala Lumpur in the District of Kuala Lumpur and deliver the same to the respondent/chargor or his solicitors and failing that the senior assistant registrar of the High Court Kuala Lumpur be empowered to execute the memorandum of discharge for and on behalf of the applicant/chargee.

Application dismissed.

Solicitors: *Yeo & Yeo; M. Segaram & Co.*

DORESAMY v. PUBLIC SERVICES COMMISSION

[O.C.J. (Raja Azlan Shah J.) June 1, 1971]

[Kuala Lumpur — Originating Motion No. 42 of 1970]

Administrative Law — Mandamus — Dismissal of public servant for breach of code of conduct — Public Officers (Conduct and Discipline) (General Orders, Chapter "D") Regulations, 1969, reg. 3(e).

Administrative Law — Dismissal of public servant — Application for mandamus against Appeal Board to hear applicant's appeal — Procedure — Public Services Disciplinary Board Regulations, 1967, reg. 12(1), 13(1), 14 and 15.

Administrative Law — Dismissal — Statutory right of appeal — Right to counsel — Regulations silent on right to legal representation — Whether aggrieved person can be deprived of fundamental right — Public Services Disciplinary Board Regulations, 1967, reg. 13(1).

Interpretation — Public Officers (Conduct and Discipline) (General Orders, Chapter "D") Regulation, 1968 — Proclamation of Emergency — Regulations suspended — Provisions of Public Officers (Conduct and Discipline) (General Orders, Chapter "D") Regulations, 1969 effected — Procedure adopted by Appeal Board — Guided by Regulations, 1969, reg. 30(8).

The applicant was employed as an office-boy at the Registry of Societies, Kuala Lumpur. On May 5, 1969, he was arrested and kept in custody under the Emergency (Public Order and Prevention of Crime) Ordinance, 1969. He was then placed under a Restricted Residence Order. Accordingly, he had thus committed a breach of code of conduct under regulation 3(e) of the Public Officers (Conduct and Discipline) (General Orders, Chapter "D") Regulations, 1969 in that he had conducted himself in such a manner as to bring the Public Services into disrepute or to bring discredit thereto.

The Public Services Disciplinary Board recommended disciplinary proceedings against the applicant with a view to dismissal. The applicant was given an opportunity to be heard and he was represented by his solicitors. The board dismissed the applicant from his service. He appealed to the appeal board through his solicitors. The chairman of the Disciplinary Board noticing that the appeal was made by the applicant's solicitor, wrote a letter to the applicant in the following terms: "I have the honour to inform you that your appeal against your dismissal from the service cannot be considered by the Public Services Commission as the appeal was made through your solicitor and not by you personally in writing as provided by regulation 13(1) of the Public Services Disciplinary Board Regulations, 1967. In view of the above, your dismissal from the service has now become absolute..."

Regulation 13(1) states: "An appeal shall be made in writing by a person aforesaid (hereinafter referred to as 'the appellant') to an appeal board through his head of department..."

The applicant applied for an order of *mandamus* against the Public Services Commission and the Public Services Dis-

ciplinary Appeal Board, to hear the applicant's appeal against dismissal.

The main issue was whether the presentation of the appeal may be made by a solicitor on behalf of an aggrieved person.

Held: (1) although regulation 13(1) is silent on the right to assistance of counsel, it is not adequate to deprive the aggrieved person of such right. The considerations requiring assistance of counsel in the ordinary courts are just as persuasive in proceedings before disciplinary tribunals. This is especially so when a person's reputation and livelihood are in jeopardy. If the ideal of equality before the law is to be meaningful, every aggrieved person must be accorded the fullest opportunity to defend himself at the appellate review stage;

(2) where he has a statutory right of appeal and the regulations are silent on the right to the assistance of counsel, the aggrieved person cannot be deprived of such right of assistance;

(3) therefore, there was nothing from regulation 13(1) which limited the applicant's right.

Cases referred to:-

(1) *Mundell* v. *Mellor* [1929] S.S.L.R. 152.

(2) *R.* v. *Assessment Committee of Saint Mary Abbotts, Kensington* [1891] 1 Q.B. 378.

(3) *Jackson & Co.* v. *Napper* (1886) 35 Ch. D. 162, 172, 173.

(4) *Pett* v. *Greyhound Racing Association Ltd.* [1968] 2 W.L.R. 1471.

(5) *Enderby Town Football Club* v. *The Football Association Ltd. & Anor.* [1971] 1 All E.R. 215.

ORIGINATING MOTION.

G. Sri Ram for the applicant.

Mrs. Ng Mann Sau (Federal Counsel) for the respondent.

Raja Azlan Shah J.: This is an application for an order of *mandamus* against the Public Services Commission and the Public Services Disciplinary (Division II, III, IV and Industrial and Manual Group Employees) Appeal Board to hear the applicant's appeal against dismissal made by the Public Services Disciplinary Board. Leave for the hearing of the application for the order against both the respondents has been granted.

The applicant was employed as an office-boy at the Registry of Societies, Kuala Lumpur. On May 24, 1969 he was arrested by the police and kept in custody under the Emergency (Public Order and Prevention of Crime) Ordinance, No. 5 of 1969. He was then placed under a Restricted Residence Order. He has thus committed a breach of code of conduct under regulation 3(e) of the Public Services (Conduct and Discipline) (General Orders, Chapter "D") Regulations, 1969 [P.U.(A)273/69] in that he had conducted himself in such manner as to bring the Public Services into disrepute or to bring discredit thereto. His head of department invited him to show cause why he should not be dismissed from service. He made representations by letter through his solicitors. The Public Services Disciplinary Board, which has jurisdiction in this matter, after due deliberation, recommended disciplinary proceedings against the applicant with a view to dismissal.

The applicant was given an opportunity to exculpate himself. His solicitors made representations on his behalf and the board, after due consideration, dismissed the applicant from his service. He was informed of his right of appeal against such decision to the Public Services Disciplinary (Division IV and Industrial and Manual Group) (Dismissal) Appeal Board. The applicant appealed to the Appeal Board in writing through his solicitors. The Chairman of the Disciplinary Board who was responsible for the preparation of the appeal recorded and forwarding the same to the Appeal Board noticed that the appeal was made by the applicant's solicitor. So he wrote a letter to the applicant in the following terms:

"I have the honour to ... inform you that your appeal against your dismissal from the service cannot be considered by the Public Services Commission as the appeal was made through your solicitor and not by you personally in writing as provided by regulation 13(1) of the Public Services Disciplinary Board Regulations, 1967. In view of the above, your dismissal from the service has now become absolute....".

Regulation 12(1) of the Public Services Disciplinary Board Regulations, 1967 allows any person aggrieved by the decision of the disciplinary board to appeal to an Appeal Board. Now regulation 13(1) states:

"An appeal shall be made in writing by a person aforesaid (hereinafter referred to as 'The Appellant') to an Appeal Board through his Head of Department...."

within a specified period, which was complied in this case. Regulation 14 in general terms provides for the convening of a meeting to hear the appeal. It also preserves the appellant's right of being heard before the Appeal Board. Regulation 15 provides for the Rules of Procedure of the Appeal Board Paragraph (1) of regulation 15 says that the rules made by the Public Services Commission for the purpose of regulating its procedure for the time being in force shall apply to the Appeal Board with such modifications as may be necessary as if such rules form part of these regulations.

Prior to the emergency *i.e.*, 15th May 1969, disciplinary procedure in respect of Government servants was governed by the Public Officers (Conduct and Discipline) (General Orders, Chapter "D") Regulations, 1968 [P.U.290/68]. When the emergency was proclaimed Regulations 1968 was suspended and the provisions of Public Officers (Conduct and Discipline) (General Orders, Chapter "D") Regulations, 1969 took effect, *vide* [P.U.(A)273/69]. Therefore it is my opinion that the procedure to be adopted by the Appeal Board would be guided by Regulations 1969, in particular regulation 30(8) with necessary modifications. In its modified form the Appeal Board may in its discretion, permit the Government or the officer to be represented by an officer in the Public Service or, in exceptional cases, by an advocate and solicitor and may at any time, subject to such adjournment as is reasonably necessary to enable the officer to present his case in person, withdraw such permission: provided that where the Appeal Board permits the Government to be represented, it shall also permit the officer to be similarly represented.

The objection taken by counsel for the applicant is that there is nothing in regulation 13(1) of the Public Services Disciplinary Board Regulations, 1967, which excludes legal representation. It is said that if that regulation were expressed in these terms:

"An appeal shall be made in writing by a person aforesaid and *none other*".

then the regulation can be construed as barring a right to legal representation. Learned counsel contends that the common law right of any person who is *sui juris* to appoint an agent to act on his behalf can only be whittled down by expressed words in the regulation or by necessary implication. He relies strongly on *Mundell* v. *Mellor*[1] which he says is directly in point. In that case the consultant engineer in whose factory an accident had occurred was summoned by the Chief Inspector of Machinery to appear before an enquiry. If the enquiry made a finding adverse to him he would be prejudiced by it. He therefore engaged Mr. Mundell, an advocate and solicitor, to represent him at the enquiry. Mr. Mundell attended the enquiry and claimed a right of audience on behalf of the consultant engineer but was refused on the ground that the tribunal had no power under section 15(iii) of Ordinance No. 42 (Machinery) to allow advocates and solicitors to take any part in the proceedings on behalf of their clients. It is necessary to reproduce section 15 which appeared from the judgment itself at page 155:

"By section 15 of that Ordinance it is provided that whenever an accident causing loss of life or grievous hurt has occurred in connection with machinery, the owner or the engineer in charge of such machinery should at once report the facts so far as known to them to an Inspector who shall thereupon visit the spot and make a preliminary investigation of the circumstances, and record in writing his finding upon such investigation, and if there has been any loss of life or there is reason to believe that any person has been fatally injured shall inform the officer in charge of the nearest Police Station; then sub-section (iii) of section 15 provides that if upon such preliminary investigation it appears to the Inspector making such investigation that there is reason to believe that the accident was due to any failure to comply with the provisions of this Ordinance or of the rules made thereunder, or to neglect of any lawful order given by an Inspector, or if the Inspector making such investigation as aforesaid is satisfied that the accident might have been prevented if proper precautions had been taken and observed in the working of any machinery, the Chief Inspector shall with one or more assessors appointed by the Local Authority (who under the Definition Clause is in Singapore, the Colonial Secretary) hold an inquiry into the nature and cause of the accident, and shall forward to the Local Authority a copy of the evidence taken at such inquiry together with his finding thereon as may seem necessary, and if he is of opinion that criminal proceedings ought to be instituted against any person in connection with the accident, he shall also forward to the Public Prosecutor a copy of the said evidence, findings and report."

On appeal Deane J. held that the common law right to appear and be heard through an agent cannot be restricted in the absence of an expressed provision restricting or taking away that right. The learned judge referred to the case of *R.* v. *Assessment Committee of Saint Mary Abbotts, Kensington*[2] in which Charles J. had to decide on the question whether a person exercising the statutory right of objecting could appear by an agent; the learned judge quoted a passage of Stirling J. in *Jackson & Co.* v. *Napper*: [3]

"I understand the law to be that, in order to make out that a right conferred by statute is to be exercised personally, and not by an agent, you must find something in the Act, either by way of express enactment or necessary implication, which limits the common law right of any person who is *sui juris* to appoint an agent to act on his behalf. Of course, the legislature may do so; but *prima facie* when there is nothing said about it, a person has the same right of appointing an agent for the purpose of exercising a statutory right as for any other purpose."

Another case cited by counsel is *Pett* v. *Greyhound Racing Association Ltd.*[4] Mr. Pett, a trainer of greyhounds was accused of doping a dog. An enquiry was to be held. Should he be found guilty his reputation and livelihood would be at stake. He also engaged counsel to represent him at the enquiry but was refused. He successfully asked for an injunction. On appeal that decision was reversed on the ground that there was nothing in the "Rules of Racing" which excludes legal representation. In fact the rules contained nothing about the procedure on an inquiry That led the Master of the Rolls, Lord Denning, to remark that when a man's reputation or livelihood is at stake he not only has a right to speak with his own mouth but also has a right to speak by counsel or solicitor. It is clear that earlier on the Master of the Rolls quoted an earlier passage from that quoted by Charles J. in *R.* v. *Assessment Committee of Saint Mary Abbotts, Kensington, supra*:

"... that, subject to certain well-known exceptions, every person who is *sui juris* has a right to appoint an agent for any purpose whatsoever, and that he can do so when he is exercising a statutory right no less than when he is exercising any other right."

The statement of the law enunciated by the Master of the Rolls must therefore be qualified by "certain well-known exceptions" and in my judgment the "exceptions" are those in which a legislation either by expressed words or necessary implication restricts the common law right of legal representation.

That brings me to the recent case of *Enderby Town Football Club* v. *The Football Association Ltd. & Anor.*[5] In that case the Enderby Town Football Club, a member of the Leicestorshire and Rutland County Football Association, runs a totalisator on which members of the public can bet. The County Football Association took exception to it. The association appointed a commission to hear charges against the club. The commission found gross negligence in the administration of the club and imposed a fine. The club appealed to the Football Association which is the governing body of Association Football. The club asked to be legally represented at the appeal but was refused. An application for an injunction restraining the Football Association from hearing the appeal was dismissed. The matter went up to the Court of Appeal. Lord Denning after distinguishing *Pett* v. *Greyhound Racing Association Ltd., supra,* said that there is no absolute right of legal representation before a domestic tribunal and much depends on the wording of the rule in question. In the *Football Club* case much turns on the wording of rule 38(b) of the Football Association Rules which provides:

"An association, competition or club may be represented at the hearing of an appeal, complaint or claim, or at an enquiry, by one or more of its members. A barrister or a solicitor may only represent an association, competition or club, of which he is a member if he be the chairman or secretary. Any person summoned to attend an enquiry or the hearing of an appeal, complaint or claim must attend personally and not be legally represented."

It was held that on a true construction of the rule, it barred legal representation for the club on the hear-

ing of its appeal; and so the club was not entitled to legal representation before the Football Association.

The present case has not reached the stage of appellate review on the merits. If that stage is reached the Appeal Board has an unfettered discretion to allow for legal representation [see regulation 30(8) of Regulations 1969 . . .]. Our case concerns the right to appeal to the Appeal Board and the issue narrows down to this: whether the presentation of the appeal may be made by a solicitor on behalf of an aggrieved person. That turns on the true construction of regulation 13(1) of the Public Services Disciplinary Board Regulations, 1967. It is manifest that the regulation gives an aggrieved person a statutory right of appeal. He is the person against whom a decision has been pronounced; he is the person with a legal grievance. Only this person may appeal. It is not open to a stranger to appeal. The language of the regulation is perfectly clear. Now this question must be posed: if he has a statutory right of appeal why cannot his solicitor appeal on his behalf? The regulation is silent on the right to the assistance of counsel. Is that adequate to deprive the aggrieved person of the right to the assistance of counsel? I think not. The considerations requiring assistance of counsel in the ordinary courts are just as persuasive in proceedings before disciplinary tribunals. This is especially so when a person's reputation and livelihood are in jeopardy. If the ideal of equality before the law is to be meaningful, every aggrieved person must be accorded the fullest opportunity to defend himself at the appellate review stage. Where he has a statutory right of appeal and the regulations are silent on the right to the assistance of counsel, he cannot be deprived of such right of assistance. I can find nothing from regulation 13(1) to limit his right. In coming to this conclusion I derived much assistance from the exposition of the law in the three authorities cited. I will allow the application with costs.

Application allowed.

Solicitors: *Bala & Co.*

D'CRUZ v. ATTORNEY-GENERAL, MALAYSIA & ANOR.

[O.C.J. (Syed Othman J.) June 9, 1971]

[Johore Bahru — Originating Motion No. 1 of 1971]

Advocates and Solicitors — Ad hoc admission — "Special qualifications" — Choice of counsel — Extent of — Advocates and Solicitors Ordinance, 1947, s. 8A(2).

Constitutional Law — Right to counsel — Federal Constitution, art. 5(3) — Construction of.

The applicant was charged in the Sessions Court at Johore Bahru with an offence under section 4(c) of the Prevention of Corruption Act, 1961. He had instructed Mr. C.K.G. Pillay, an advocate and solicitor in Johore as his solicitor but, according to his affidavit, "in view of the complexity of the case, he feels that full justice can only be done if Dato David Marshall is instructed by Mr. Pillay to act for him." He applied for the *ad hoc* admission of Dato David Marshall to lead Mr. Pillay in defending him in that case.

The Attorney-General and the Bar Council objected to the application on the ground that there was nothing to show that Dato David Marshall had the special qualifications or experience mentioned in section 8A(2) of the Advocates and Solicitors Ordinance.

Counsel argued not only upon the matters set out in the affidavits, but also on the right of the subject to consult and be defended by a legal practitioner of his choice as provided by clause (3) of article 5 of the Constitution which reads:- "(3) Where a person is arrested he shall be informed as soon as may be of the grounds of the arrest and shall be allowed to consult and be defended by a legal practitioner of his choice." Thus the issue before the court was whether the right to choose here extended to any legal practitioner of any country in the world.

Held, dismissing the application: (1) specifically the Constitution applies to Malaysia. The right given under article 5 cannot be read as extending to any legal practitioner anywhere in the world, regardless whether or not he is qualified to practice here; the right given to the arrested person in the article must be limited to the choice of legal practitioners who are qualified to practise under our law;

(2) whether or not a practitioner from outside the Federation possesses special qualifications or experience "to do justice in a case" is irrelevant for the purpose of *ad hoc* admission. What is relevant is whether for the purpose of a particular case he possesses special qualifications or experience not available amongst advocates and solicitors in Malaysia. To say that a practitioner, whether in this country or elsewhere, possesses the qualifications or experience to do justice in a case is inimical to our concept of justice. The administration of justice is a matter for the courts and not a matter for any advocate and solicitor in this country or from abroad.

Case referred to:-

(1) *In Re G.G. Ponnambalam* [1969] 2 M.L.J. 263.

ORIGINATING MOTION.

C. K. G. Pillay for the applicant.

C. Paramjothy for the Bar Council.

Ahmad Fiaruz bin Dato Sheikh Abdul Halim (Federal Counsel) for the Attorney-General.

Cur. Adv. Vult

Syed Othman J.: The applicant is being charged in the Sessions Court at Johore Bahru with an offence under section 4(c) of the Prevention of Corruption Act, 1961. He has instructed Mr. C. K. G. Pillay, an advocate and solicitor in Johore as his solicitor but, according to his affidavit,

"in view of the complexity of the case, he feels that full justice can only be done if Dato David Marshall is instructed by Mr. Pillay to act for him".

He applies for the *ad hoc* admission of Dato David Marshall to lead Mr. Pillay in defending him in that case.

Mr. Pillay says in his affidavit that subject to the court's approval he intends to instruct Dato David Marshall to lead in this case as he was of the view that

"in the circumstances of this case he possesses the special experience to do full justice to the applicant and to serve the administration of justice, that from instructions which the applicant has given him he is of the view that the case involves important points of law on jurisdiction, procedural matters, interpretation of Statutes and Government regulations, especially relating to the Malaysian navy, as well as matters of division of responsibility between the officers at various levels of the naval organisation and the whole network of the financial control of the Malaysian navy."